

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

August 12, 2004

IN RE:

UNITED CITIES GAS COMPANY, a Division of
ATMOS ENERGY CORPORATION
INCENTIVE PLAN ACCOUNT (IPA) AUDIT
AND
PETITION OF UNITED CITIES GAS COMPANY
TO AMEND THE PERFORMANCE BASED
RATEMAKING MECHANISM RIDER TO ITS TARIFF

DOCKET NO.
01-00704

**ORDER DENYING MOTION OF THE STAFF OF THE ENERGY AND WATER
DIVISION TO SET THE PETITION OF UNITED CITIES GAS COMPANY TO
AMEND THE PERFORMANCE BASED RATEMAKING MECHANISM RIDER TO
ITS TARIFF FOR HEARING ON THE MERITS AND MODIFYING
PROCEDURAL SCHEDULE**

This matter came before the Hearing Officer at a Status Conference held on June 25, 2004. On June 16, 2004, the Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff") filed its *Motion of the Staff of the Energy and Water Division to Set the Petition of United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to its Tariff for Hearing on the Merits* ("Motion"). In the *Motion*, Staff requested that the Hearing Officer set a procedural schedule, set a hearing on the merits exclusively on the issue of the *Petition of United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to its Tariff* and hold all remaining issues in this Docket in abeyance. The Staff cited as grounds that 1) further delay in completing audits of Atmos' incentive plan account for

three plan years, March 31, 2002 through March 31, 2004, would be burdensome to Staff and would not be in the public interest; 2) further delay in ruling on the "retroactive ratemaking" issue raised by the Consumer Advocate would be prejudicial to Atmos and its customers; and 3) the remaining issues in this Docket were not time-sensitive and narrowing the number of issues to be litigated would accelerate resolution of this matter. At the Status Conference on June 25, 2004, United Cities Gas Company (hereinafter "Atmos Energy Corporation" or "Atmos") orally stated its support for Staff's *Motion*.¹

On June 23, 2004, the Consumer Advocate and Protection Division ("Consumer Advocate") filed *The Consumer Advocate Division's Response to the TRA Staff's Motion to Set Atmos' Petition for Hearing* ("Response"). In its *Response*, the Consumer Advocate asserted that the matter should proceed forward with a procedural schedule and a hearing on the merits to determine all issues in the interest of judicial economy. The Consumer Advocate stated that discovery needs would be better accommodated if the Dockets remained consolidated and that the witnesses for both Dockets would be virtually the same. Finally, the Consumer Advocate requested that the Staff's *Motion* be denied and that *The Consumer Advocate's Motion to Set an Evidentiary Hearing on the Merits*, filed on June 7, 2004, be granted.²

The Hearing Officer first notes that at the Status Conference held on April 22, 2004, the Parties agreed to address the issue of consolidation of the Dockets separate

¹ Transcript of Proceedings, pp 5-8 (June 25, 2004)

² *The Consumer Advocate's Motion to Set an Evidentiary Hearing on the Merits* was rendered moot in large part by the decision to deny the *Motion to Approve Settlement Agreement*. See *Order Granting in Part and Denying in Part Consumer Advocate's Renewed Motion to Summarily Deny Motion to Approve Settlement and Alternatively to Treat the Motion as a Motion for Summary Judgment and Denying Motion to Approve Settlement Agreement* (August 12, 2004). To the extent that the Consumer Advocate requested a procedural schedule to be issued and an evidentiary hearing to be set, *The Consumer Advocate's Motion to Set an Evidentiary Hearing on the Merits* is granted by this Order.

from consideration of the issue of approval of the settlement agreement.³ The Hearing Officer then found that Docket No. 01-00704 and Docket No. 02-00850 were significantly related and that consolidation of the Dockets would conserve resources and assist in bringing matters to a resolution. As a result, the *Motion to Consolidate and to Approve Settlement Agreement* was granted to the extent that these Dockets were ordered to be consolidated.⁴

For the reasons previously stated when these Dockets were consolidated, the Hearing Officer finds that the best way to accomplish an expeditious resolution of these matters is to grant discovery, set a procedural schedule and hear and consider all issues in the consolidated Dockets simultaneously. However, the Hearing Officer agrees with Staff and Atmos that further delays in the resolution of these matters should be avoided. In an effort to bring these consolidated Dockets to a conclusion, and based upon the suggestions of the Parties, a new Procedural Schedule was established at the June 25, 2004 Status Conference:

July 30, 2004	Pre-filed Direct Testimony Due
August 10, 2004	Discovery Requests Due (one copy filed with the Authority)
August 20, 2004	Responses and Objections to Discovery Requests Due (one copy filed with the Authority)
August 27, 2004	Motions to Compel Due

³ The Hearing Officer subsequently denied the *Motion to Approve Settlement Agreement*. See *Order Granting in Part and Denying in Part Consumer Advocate's Renewed Motion to Summarily Deny Motion to Approve Settlement and Alternatively to Treat the Motion as a Motion for Summary Judgment and Denying Motion to Approve Settlement Agreement* (August 12, 2004).

⁴ *Order Granting Motion to Consolidate and to Approve Settlement Agreement in Part, Granting Motion for Extension of Time to Respond in Part, and Setting Procedural Schedule*, p. 2 (April 28, 2004)

September 2, 2004	Status Conference on Objections to Discovery Requests and Motions to Compel shall begin at 10:00 a.m. (central). Schedule for Supplemental Responses to Discovery Requests may be set at this hearing
September 23, 2004	Pre-filed Rebuttal Testimony Due
October 13-14, 2004	Hearing on the merits

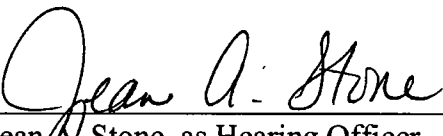
The Parties have now jointly requested a modification of the Procedural Schedule noted above. The Hearing Officer finds that the request is well taken and concludes that the Procedural Schedule should be modified as set forth below:

August 13, 2004	Discovery Requests Due (one copy filed with the Authority)
August 25, 2004	Responses and Objections to Discovery Requests Due (one copy filed with the Authority)
August 31, 2004	Motions to Compel Due
September 10, 2004	Status Conference on Objections to Discovery Requests and Motions to Compel shall begin at 10:00 a.m. (central). Schedule for Supplemental Responses to Discovery Requests may be set at this hearing
September 30, 2004	Pre-filed Rebuttal Testimony Due
October 19 - 20, 2004	Hearing on the merits

All filings shall be due at 2:00 p.m. (central) on the dates indicated.

IT IS THEREFORE ORDERED THAT:

1. The *Motion of the Staff of the Energy and Water Division to Set the Petition of United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to its Tariff for Hearing on the Merits* is denied;
2. The *Consumer Advocate's Motion to Set an Evidentiary Hearing on the Merits* is granted in part, to the extent that a procedural schedule is issued as modified and an evidentiary hearing is set as stated herein; and
3. The Procedural Schedule is modified as set forth herein.


Jean A. Stone, as Hearing Officer